Town of Goffstown
BOARD OF SELECTMEN

August 13, 2013

USEPA
5 Post Office Square – Suite 100
Mail Code-OEP06-1
Boston, MA 02109-3912
ATTN: Newton Tedder

RE: Comments to the 2013 Draft MS4 NPDES Permit

Dear Mr. Tedder:

On behalf of the community of Goffstown, please accept the following comments on the proposed 2013 Draft MS4 NPDES Permit issued on February 12, 2013. The Town would like to acknowledge its sincere appreciation for the granting of two extensions. The extensions gave the Town and other towns in the region an opportunity to adequately review the proposed language contained in the permit and consider the ramifications of the permit changes.

The Town would also like to formally acknowledge the staff at NHDES who have patiently met with and worked with the MS4 Communities to understand the permit implications and find opportunities for the various levels of government to work cooperatively to serve our citizens in the most cost-effective and efficient way in complying with the Clean Water Act requirements. It would be the Town's suggestion and hope that once the comment period closes and EPA begins the task of responding to the comments, that EPA join in these very fruitful inter-governmental implementation discussions.

The Town is also part of a MS4 Coalition. Comments will be submitted on behalf of the Town from Sheehan, Phinney, Bass & Green, PA.

In regards to general comments the Town offers the following:

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Section 1.9.2 dealing with Historic Properties is unchanged from the 2003 permit; however, what has changed is the mapping and reporting requirements. The 2003 permit focused on outfalls; in the new permit we will be documenting all drainage structures within our MS4 system. This potentially opens the Town up to onerous Section 106 reviews for each and every catch basin, detention pond and drainage swale that we need to work on. To avoid lengthy Section 106 reviews the EPA/NHDES should work with the State Historic Preservation Officer (SHPO) to develop a programmatic agreement regarding historic properties and MS4 related activities. This would be a great tool for implementing approaches that may not follow the normal Section 106 process. This can be done to streamline and enhance historic preservation and project delivery efforts.

Section 2.1.1.c establishes the requirement to remedy any conditions causing an exceedance of water quality standards within 60 days of a determination that our discharge is causing an exceedance. The section specifically spells out that the compliance clock begins to accrue immediately and continues until the source is remedied and that there is not a grace period. This, coupled with the fact that we have to conduct dry weather sampling of all of our outfalls at the same time will put the Town into almost immediate non-compliance. To help deter the stringent requirements of the water quality exceedance, the Town is asking for time to evaluate the water quality data that NHDES has used to determine the 303 (d) list. Within the first 3 years of the permit we could prioritize our outfalls based on the use of the receiving water value (as determined by NHDES) and risk to the public. We can then implement a rigorous sampling program of the high value/high priority water bodies and develop plans to remedy any sources of contaminants specifically from our MS4. Section 2.1.2 prohibits any new or increased discharges (including pollutant loadings). Does this mean that the Town needs to notify NHDES every time we issue a driveway permit or add a catch basin to our drainage system? Do we also have to provide a waste load analysis for every driveway? This provision seems administratively burdensome and the Town doubts that NHDES has the resources to respond to such a requirement.

The Table F-1 dealing with the Statewide Bacteria TMDL appears to have the column headings for Single Sample and Geometric Mean reversed. Also, the Statewide Bacteria TMDL appears to be based on outdated methodology and should be revised to reflect current EPA guidance. We also question why the beach bacteria standard would be applied year round when swimming in NH is a very limited season. It would make much more sense to have a seasonal swimming limit.

The reductions to meet the TMDL in Table F-1 are based on the highest measured sample ever taken in a water body and are not indicative of the overall water quality of the

receiving water or the average levels expected from the MS4 discharges. It would be more prudent to allow for more sampling of each water body and take an overall average of each measured sample. The results will give a better overall picture of the water quality for each water body. As mentioned above, this can be done during the first 3 years to create a more rigorous and accurate storm water program.

Goffstown estimates that hundreds of thousands of dollars will be spent in sampling and BMP costs dealing with the bacteria TMDL in the Piscataquog River. A review of the data for the past 10 years of Glen Lake (highest priority due to the swimming beach) reveals that there have only been 5 times that we have exceeded 100 #/100ml. The highest value is 200. It seems a bit inefficient to have the Goffstown taxpayer paying hundreds of thousands of dollars to try to control bacteria in the river when there are still direct sewer overflows during heavy rain storms just a few miles downstream. We need to find a mechanism to channel the money to have the greatest impact on cleaning up the problems in our watersheds.

Section 2.2.2 establishes an iterative approach to addressing non-compliant discharges over the course of the 5 year permit. That timeframe is not practical given the far reaching extent of the water quality issues in southern NH. The legal standard of maximum extent possible, which, was in the first permit did not require immediate compliance with water quality standards. This permit deviates from that approach leading to the immediate non-compliance issue. We anticipate that it will take time to prioritize; plan, permit, fund and construct many of the structural BMP's that will be required. We propose allowing the Town to work with NHDES during the first 3 years of the permit to prioritize our receiving waters and develop a plan to concentrate on the high value waters first.

Many of the water quality issues identified for Goffstown, such as, the bacteria in Harry Brook (all samples taken within months of the 2006 flood) and the chloride in Catamount Brook (all samples immediately downstream of a pig farm) are based on very limited data. Before plans are developed for these areas we need to conduct more extensive sampling and study focused on these areas.

Section 2.2.2.a.ii.b.3 states that all planned BMP's shall be fully implemented within three years of the permit effective date. This is not feasible given that almost all of Goffstown's outfalls discharge to impaired waterways and we have to deal with all of them at once. The Town requests the ability to prioritize our outfalls to concentrate on the highest priority outfalls (ie. discharges near the Glen Lake beach) first. Though at this time we do not have the data to say this for certain, we suspect that some of the BMP's will take longer than 5 years to implement.

Section 2.2.2 lays out a schedule requiring completion of all 3 phases of compliance with the permit within the 5 year term of the permit. At an EBC Meeting in Manchester, NH on July 10th Administrator Curt Spalding admitted to the audience that EPA recognized that storm water compliance needed to be a long-term solution.

On Page 27 of 60 under 2.3.4.2.b there is reference to a 30 day time limit to remedy and illicit discharge. This is inconsistent with the 60 day limit mentioned earlier.

In response to a comment received from CLF on the 2008 draft permit EPA decided to strike the language in Section 2.1.1.a(ii) "In the absence of information suggesting otherwise, discharges will be presumed to meet the applicable water quality standards if the permittee fully satisfies the provisions of this permit." EPA's rationale in doing this was that the language has no meaningful purpose in the permit. EPA then added the language in section 2.2.2 that says "EPA presumes that MS4 discharges are potential contributors to the impairments due to nutrients (phosphorus or nitrogen), bacteria, suspended solids, metals, or oil and grease." This language represents a 180 degree shift in EPA's approach to MS4 compliance and creates and untenable position for a community to meet; especially given the stiff penalties established in the clean water act. The Town respectfully disagrees with EPA's assessment that this language has no meaningful purpose. If this approach is required for storm water by the Clean Water Act then it is obvious that the CWA is not appropriate to manage storm water which is discharging from municipal systems that are hundreds of years old.

In EPA's response to comments to the 2008 draft permit EPA states "Section 301 of the CWA prohibits discharge of a pollutant without, or contrary to the requirements of the permit that authorize its discharge, and failure to meet those requirements is addressed through compliance and enforcement actions within the scope of the permit, not through the denial of authorization. Indeed, since most of the MS4s potentially subject to authorization under this permit are already discharging storm water, the purposes of the CWA would not be well-served by excluding permittees from all the more stringent requirements of the reissued permit until such time as they resolve every specific water quality issue."(page 29 of the Fact Sheet) This statement recognizes that MS4 systems predate the CWA and this MS4 Permit, however, the language in Section 2.1.1 states "If at any time the permittee determines or EPA or the state agency determines that a discharge causes or contributes to an exceedance of applicable water quality standard, the permittee shall within 60 days of becoming aware of the situation eliminate the conditions causing or contributing to an exceedance...". This again seems to be a contrary approach taken in this permit as compared to the 2003 Permit.

This permit represents an increase in administrative and technical effort that would be impossible for any municipality to absorb. It is not necessarily the permit conditions themselves but rather the sheer volume of the impaired water bodies. According to EPA's website; New Hampshire ranks 7th in the nation in the number of impaired water bodies. New Hampshire also ranks 2nd in the nation in the number of TMDL's with over 6,000. The state response to this is that most of those TMDL's (approx. 5,000) are for mercury, however, even if the mercury TMDL is taken off the list it still leaves 882 TMDL's which would still have NH in the top 15 states by number of TMDL's. Most of Goffstown's outfalls discharge to impaired water bodies. This coupled with the age of Goffstown's sewer system limits our ability to prioritize our outfalls. The town cannot afford to tackle all of the outfalls simultaneously and meet the 5 year deadline spelled out in this draft permit.

Another concern is that mercury, though it is clearly established is the result of air disposition not storm water runoff is still a concern based on the increased requirements to manage sediment removed from the roadways that could have mercury contaminants present.

In Appendix H, Catamount Brook in Goffstown is listed with chloride impairment. The limited amount of chloride data on Catamount Brook is taken in close proximity to a pig farm located in town. This section of town is comparatively rural so the entire listing is suspect. There are many time consuming requirements that would need to be implemented for chloride management in town based on this one limited sample. The town would need time to work with NHDES to establish that this impairment is even valid or that the MS4 is contributing to it. As stated in the Appendix the goal is to substantially reduce chloride discharges. The majority of chloride discharges are from salt as it is applied to roadways in treatment of icy and snowy conditions. The Town has a primary duty to public safety and has to carefully weigh the salt reduction benefits to the environment with the Town's legal exposure to provide for safe travel.

Also, the Town has asked its Town Attorney to review the assertion that RSA 31:39 gives towns and cities the necessary authority to regulate chloride use on private properties with approved site plans. The Town respectfully disagrees with that assertion and feels that adequate time needs to be built into the schedule to allow the legislature to grant the necessary authority to affected communities. The Town also asserts that town by town compliance with chloride use will be disastrous to NH's business community. A large organization such as Hannaford Supermarket could potentially have to have its contractors comply with 13 different chloride management ordinances. This would be accomplished much more efficiently at the state level.

Overall, the IDDE Screening requirements are quite well done, however, there is an extensive amount of work required to inventory the system in the first year. It would be beneficial to allow the inventory to be completed within the first 3 years of the permit. This would better coincide with what was requested above for prioritizing water bodies.

Holding the Town immediately and legally responsible for the illegal acts of others who have illicit discharges into our system is not required in the storm water regulations. Given the statutory penalties required by the CWA as they compare to the statutory penalties that a NH community can impose on a violator; this creates a very unfavorable position for a local government to be placed in by this permit.

Section 2.3.7.d.iii requires sweeping of uncurbed streets. This is not practical as the efficiency of a mechanical sweeper is greatly reduced in the absence of curbing. Streets with no curbs are affected by the same factors as curbed streets, but with no curb the debris is dispersed onto areas adjacent to paved surfaces. Uncurbed streets are, in effect, self-cleaning as most of the roadway discharge is absorbed into the ground below the ditch lines. Of our 132 miles of road in town only 8 miles is curb and gutter. We currently sweep the curb and gutter sections twice per year at a cost of $9,500 per year. If the Town is required to sweep all 132 miles of road the approximate cost would exceed $70,000 per year.

It appears the EPA has accepted and published the NHDES 2012 - 303 (d) list. Goffstown would like to point out a few issues in that list in anticipation of it being incorporated into the future permit. The 303 (d) list shows an impairment for lead in the Black Brook. This is clearly (and appropriately referenced in the 303 (d) list) as having a source of Inappropriate Waste and Contaminated groundwater. This has nothing to do with Goffstown's MS4 but rather a privately owned shooting range in Hooksett. Also, Catamount Brook shows a chloride impairment. In the sources it lists Shopping Districts, Urbanized High Density and parking lot runoff. This is a very rural area of town with no commercial/industrial activity. There is only the local pig farm. This area needs to be clearly delineated to define the sources of the contaminants. In recent sampling done by Town forces the chloride and specific conductance levels are well below action levels. This should not be listed as an MS4 issue. They also have Catamount Brook listed as a primary contact recreation which it is not.

The Final – 2012 – 303 (d) list includes an impairment for Total Phosphorus and Chlorophyll-a for Kelly Falls Pond (aka Namaske Lake). Nutrient impairments are such a complicated and expensive issue to deal with that Goffstown feels this should not be

included in the permit until a TMDL is completed and the sources of the contaminants are clearly identified.

Again we suggest that once the comment period has closed the EPA should reach out to all MS4 communities in an effort work cooperatively to develop the most efficient/effective methods to comply with the permit objectives. The Town encourages this effort to help build a better understanding between the EPA and local communities. This should be done while the EPA responds to comments which can aid in revising the permit to ensure that the local communities receive a more comprehensive permit which preserves the environment and uses limited local resources' wisely.

Sincerely,

Collis Adams
Chairman

Mark Lemay
Vice Chairman

John A. Brown
Selectman

Nick Campasano
Selectman

Philip A. D'Avanza
Selectman

Cc: Vicki Quiram, Assistant Commissioner, NHDES
Jeff Andrews, NHDES